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SUBJECT: DRC: 2006 INVESTMENT CLIMATE STATEMENT

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¶1. Summary: In the almost three years since the Global and Inclusive Accord was implemented with the installation of a transitional government, the Democratic Republic of the Congo (DRC) has done much to improve the country's investment climate. While there is still much more to do, the pacification and reunification of the country has led to greater political and economic stability that is encouraging foreign investment in the DRC. This in turn is spurring the Congolese authorities to normalize DRC regulatory practices in compliance with international norms. End summary.

Background/Context

¶2. The DRC has made significant political and economic advances during its transition. The DRC is now preparing for elections, following the approval of a new constitution in a December 2005 national referendum. This period of relative political and economic stability has led to steady improvement in the country's investment climate.

¶3. The government of the Democratic Republic of the Congo (GDRC) has capitalized on the country's increased political stability to maintain and improve the country's macroeconomic environment. Despite the return to double-digit inflation at the end of 2004 and the first half of 2005, overall inflation for 2005 was 21 percent, with little or no inflation during the second half of the year. At 430 Congo francs (CF) per USD, the Congo franc was stronger at year-end than had been projected for 2005 (488 CF/USD), and it remains stable, with the Congolese franc even appreciating slightly against the dollar. New Customs and Forestry Codes were promulgated in 2005 and are now being implemented. The GDRC is taking steps to reform its public enterprises and administrative agencies in line with IMF conditionalities.

¶4. The implementation of these reforms, however, still requires additional time, effort, and dedication from transitional government authorities, who are now focusing on upcoming legislative, local, and presidential elections, due to take place in the first half of 2006. The Congolese justice sector is

extraordinarily weak. The structure of the current transitional government (a president and four vice presidents representing different factions) is inefficient and ineffective, but will end with the installation of a democratically elected government in ¶2006. Public enterprises and state revenue-collecting agencies were apportioned to various groupings in the transitional government in accordance with the power-sharing arrangements governing the transition. Many of these institutions are riddled by corruption involving the collection and expenditure of funds that should go into the national treasury.

Openness to Foreign Investment

¶5. The DRC seeks to attract foreign investors in order to boost production and increase economic growth. To overcome previous hurdles and to simplify and facilitate investment, the GDRC has created a one-stop agency called the National Agency for Investment Promotion (ANAPI). This agency is using provisions of the new Investment Code to simplify new investments and to make the procedure more transparent.

¶6. Congolese investment regulations, both in the official Investment Code and in practice at ANAPI, do not discriminate against foreign investors, except in some specific cases dealing with labor and related taxes. For example, under the terms of the U.S.-DRC Bilateral Investment Treaty (BIT), a U.S. investor must pay an additional tax on any non-Congolese staff holding

management positions. All businesses in the DRC face multiple, burdensome, and sometimes fictitious taxation.

¶7. There are no formal limits or screening mechanisms imposed upon foreign ownership of businesses in the DRC. In some sectors, however, foreign investors must compete for exclusive rights to what are considered finite resources, such as mineral ores and telecommunications bandwidth. The granting of permits and licenses in these lucrative sectors often suffers from arbitrariness, lack of transparency, and corruption.

¶8. The World Bank (WB) and the International Maritime Organization (IMO) have helped the DRC to improve the movement of goods. With the assistance of the WB, the GDRC is improving border clearance procedures for imports and exports by the creation of the "guichet unique" - a one-stop customs and duties approach. Security upgrades in compliance with the International Port Security (ISPS) Code, as required by the IMO and monitored by the U.S. Coast Guard, have improved the security at the main maritime ports in the country, in and around Matadi, but operations remain very inefficient. A similar project is underway at the principal overland border post at Kasumbalesa, on the border with Zambia in the south.

¶9. GDRC administration of the minerals sector, with the new Mining Code in place and through the work of the Mining Registry or "Cadastre Minier" (CAMI), appears to have improved. The new mining code is being implemented according to plan, and both longtime and new mining investors appear to be complying with it. Full and fair application of the code, however, has yet to be achieved.

¶10. All investors in the DRC suffer from multiple audits by various government enforcement agencies seeking evidence of violations of tax laws or price controls. Foreigners and Congolese alike suffer the

consequences of nonfunctional judicial institutions. Current efforts to reform public administration and the judiciary should bring improvement.

Conversion and Transfer Policies

¶11. The DRC has adopted a freely floating exchange policy for its currency to support the liberal economic policy it began implementing in 2001. The DRC has lifted restrictions on business transactions throughout its territory. International transfers of funds take place freely when transacted through a local commercial bank. The bank declaration requirement and payments for international transfers now take less than one week to complete, on average.

¶12. The Congolese franc has benefited from the political and economic advances in the country. It has remained relatively stable for over three years, and the currency exchange rate has been virtually harmonized throughout the country on both the formal and parallel markets, ending previous de facto separate monetary zones within the country.

¶13. The IMF and the WB are assisting the Congolese Central Bank (BCC) with its monetary and fiscal policies. The BCC has been successful recently in controlling inflation. The largest banknote in circulation currently is the 500 Congo franc note, but it is expected that larger denominations (1000 Congo francs and 5000 Congo francs) will be put into circulation after the new government takes office in mid-
¶2006. The only currency restriction imposed on travelers is a USD 10,000 limit on the amount an individual can carry when entering or leaving the DRC.

Expropriation and Compensation

¶14. There have been no expropriatory actions in the recent past. Post is aware of seven existing claims

that date from 1991 to 2002, most of which have been taken to arbitration (see Dispute Settlement section below). Arbitration judgments against the GDRC, however, have not been paid in a timely manner, if at all. The GDRC has no tendency to discriminate against U.S. investment, companies, or representatives. There are no laws forcing local ownership, although parastatals in the petroleum and mining sectors maintain minority shares of most foreign-owned projects.

Dispute Settlement

¶15. The U.S.-DRC Bilateral Investment Treaty (BIT) provides for International Center for Settlement of Investment Disputes (ICSID) conciliation or binding arbitration in the case of investment disputes. A number of U.S. firms pursued claims against the GDRC for damages resulting from civil disturbance by military mutinies in 1991 and 1993. Two investors have won settlements from ICSID. In early 2004, a claimant under the BIT won a settlement from ICSID but has not yet collected payment from the GDRC. The other investor, who successfully collected the compensation awarded by ICSID, received damages in 1999.

¶16. On paper, the DRC's official policies are satisfactory and even attractive to business, but in recent years they have often been inoperative in

practice due to problems with the judicial system. There is no transparent and responsible hierarchy for public order; courts are marked by a high degree of corruption; public administration is not reliable; and both expatriates and nationals are subject to selective application of a complex legal code. Official channels often do not provide direct and transparent recourse in the event of property seizure, for which legal standing can rarely be determined. Seizures have been made via the police and/or military, often supported by questionable decisions from the courts. Foreign enterprises may have slightly better security of ownership due to the presence and intervention of their diplomatic missions. Many Congolese business contracts provide for external arbitration, but this is an expensive and time-consuming option with little value for resolving routine, day-to-day business problems.

¶17. The GDRC's structural reform program includes the creation of a commercial court with jurisdiction over all commercial disputes. This court, however, has not yet become operational.

Performance Requirement and Incentives

¶18. The new DRC Investment Code is a simplified and improved version of its predecessor. Performance requirements are not included as obstacles to foreign investors. There are, however, investment conditions that must be agreed upon with the GDRC. These conditions are discussed and agreed upon initially with the DRC investment agency, ANAPI (see para 5), which assures the same procedure for all qualified foreign investments. The DRC has shortened this agreement procedure to approximately 30 days, and has created a number of incentives to attract foreign investment to the country. These range from tax breaks to duty exemptions granted for three to five years, and are dependent upon the location and type of enterprise, the number of jobs created, the extent of training and promotion of local staff, and the export-producing potential of the operation. The Ministry of Labor controls expatriate residence and work permits. For U.S. companies, the BIT assures the right to hire staff of their choice to fill some management positions, but the companies agree to pay a special tax on expatriate salaries.

¶19. Performance requirements agreed upon initially with ANAPI include a timeframe for the investment, the use of Congolese accounting procedures and periodic authorized GDRC audits, the protection of the environment, periodic

progress reports to ANAPI, and the maintenance of international and local norms for the provision of goods and services. The investor must also agree that all imported equipment and capital will remain in place for at least five years. There are no discriminatory or excessively onerous visa, residence or work permit requirements designed to prevent or discourage foreigners from investing in the DRC.

¶20. By the terms of the Investment Code, the GDRC may require compliance with an investment agreement within 30 days of notification. Continued violations of an agreement may result in sanctions, including repayment of benefits received (such as tax exemptions) and eventual nullification of the agreement.

¶21. In the case of a dispute between a U.S. investor and a GDRC agency, the investor is subject to the Congolese civil code and legal system. If the parties cannot reach agreement, under the terms of the U.S.-DRC

BIT the dispute is taken to the ICSID or to the Paris-based International Chamber of Commerce (ICC).

¶22. GDRC public administration reforms implemented since 2002 have allowed foreign investors to bid on government contracts just as domestic investors, with no discriminatory terms. Foreign firms may even be favored in the bidding process because they are able more easily to access and present international insurance funding guarantees.

Right to Private Ownership and Establishment

¶23. The recently approved DRC Constitution (chapter 2, articles 34-40) protects private ownership without discrimination between foreign and domestic investors. It also protects investments against takeover, unless the investment conflicts with some overriding public interest. In this case, there are legal provisions for equitable and appropriate compensation for the parties involved.

¶24. The GDRC has restricted one category of small businesses to Congolese nationals. This covers artisanal production sector activities, small public transport firms, small restaurants, and hotels with fewer than ten beds.

¶25. With the sponsorship and technical assistance of the WB, a tender board now works under the supervision of the Ministry of Budget. Foreign investors and private domestic companies may bid on public/government contracts on an equal basis with interested public companies. Normally, however, public companies and/or parastatals do not participate in the bidding process, due to the financing guarantees required beforehand.

Protection of Property Rights

¶26. Despite the new DRC Constitution and attempts to enforce existing legal provisions, protection of property rights still depends upon a currently dysfunctional public administration and judicial system. Some senior-level officials are making efforts to restore and improve the legal and administrative frameworks but the challenge will be to implement these changes at a practical level.

¶27. Ownership interest in movable properties (e.g. equipment, vehicles, etc.) is secured and registered through the Ministry of the Interior's Office of the Notary. Real estate property (e.g. buildings and land) is secured and registered at the Ministry of Land's Office of the Mortgage Registrar.

¶28. In principle, intellectual property rights are legally protected in the DRC. Because of poor-performing administration and judicial systems, however, this protection does not always exist in practice. The country has signed on to a number of international

agreements with organizations such as the World Intellectual Property Organization (WIPO), and the Paris Convention for Protection of Intellectual Properties, which protects trademarks and patents. The DRC is also a member of the Berne Convention that protects copyright, artistic works, and literary rights. The maximum protection that these conventions provide is 20 years for patents and 20 years, renewable, for trademarks, beginning from the date of registration. If it is not used within three years, a trademark can be

cancelled. The DRC has not yet signed the WIPO Internet Treaties.

¶29. The GDRC's Ministry of Industry and Small/Medium Enterprises is currently working on IPR-related legislation in order to comply with all existing international agreements.

Transparency of Regulatory System

¶30. Implementing a transparent regulatory system is still a challenge in the DRC. The GDRC is making some effort to improve the situation. This appears to be a priority for the GDRC, which has made generally good decisions and has had appropriate legislation enacted by the parliament. Implementation and compliance, however, are still far from securing a complete legal and regulatory framework for the orderly conduct of business and the protection of investment.

¶31. There are no formal or informal provisions by any private or public structure, in any business-related environment, used to impede foreign investment. Problems encountered within the GDRC tend to be administrative and/or bureaucratic in nature since reforms and improved laws and regulations are often poorly or unevenly applied.

¶32. Proposed laws and regulations are not published in draft format for public discussion and comments. They are normally discussed only within the governmental or administrative entity that drafts them and then again at the parliament prior to a vote. The Congolese public, as well as foreign and domestic investors, are not given adequate opportunity to discuss or comment on these proposals.

¶33. The IMF and the WB are working with the GDRC to bring the country into compliance with international business norms for accounting, legal, and regulatory systems. Examples include the recently promulgated Customs and Forestry Codes, and the creation of a harmonized procedure manual for a one-stop customs clearance office (see para 8) soon to be functioning at the port of Matadi. The GDRC recently announced its intention to join the Organization for the Harmonization of Business Law in Africa (OHADA). This will help the DRC to improve its legal standards.

¶34. To attract foreign direct investment, the DRC continues to make efforts to provide a well-defined, transparent business environment. Foreign investors are encouraged to contribute their industrial and business experience to help the GDRC set standards for investment and production. The GDRC authority on business standards, the Congolese Office of Control (OCC), oversees participation by foreign businesses.

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Efficient Capital Markets and Portfolio Investment
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¶35. The local capital market in the DRC is in recovery mode, but it still has a long way to go. Efforts are being made to reinvigorate financial market and credit instruments. Economic growth in the DRC since 2002 (6.6 percent GDP growth in 2005) has increased the flow of money in the finished goods and raw materials market. Credit markets also are becoming more active, mainly in the commercial project and medium-term project sectors. All economic operators, foreign and domestic, have access to credit markets in the DRC without

discrimination, as long as they can provide credible guarantees. Foreign investors, though, are more likely to benefit from this type of credit, since they are able to provide guarantees and collateral secured by foreign banks.

¶36. The commercial banking system has undergone a full reorganization, although there is still only one bank branch for each 1.5 million Congolese. The BCC and the IMF are working together on a program of banking reforms. Two main objectives are to restore confidence in the commercial banks and to promote the intermediary role of the banking system in the DRC. In a country of nearly 60 million inhabitants, there are only 10 commercial banks and a mere 45,000 bank accounts. Total assets within the banking system amount to about USD 700 million. Bank credit to the economy amounted to 1.5 percent of GDP while bank deposits were less than five percent of GDP in 2004.

¶37. Business practices in the DRC are still at a fairly rudimentary level. Cross-shareholding and stable shareholding arrangements are not common in the DRC. There are occasional complaints about unfair competition between investors in profitable sectors such as mining and telecommunication.

Political Violence

¶38. Congo has suffered bouts of civil unrest and conflict for many years. Large-scale military looting in 1991 and 1993, for example, resulted in a significant loss of economic productive capacity. In addition, widespread looting and destruction associated with wars in the Congo from 1996-1997 and from 1998-2003 further damaged Congolese economic activity. The new government under President Joseph Kabila initiated a number of reforms after assuming power in January 2001, and peace accords that established a transitional government in June 2003 called for the installation of a democratically elected government by mid ¶2006.

¶39. There have been no incidents of politically motivated damage to projects or installations during the transitional period. The possibility of political violence exists, however, during the 2006 run-up to elections and in their immediate wake. In addition to political demonstrations, strikes by civil servants and teachers over salary and benefit issues have occurred and continue to pose a potential source of social upheaval. Military and police personnel remain poorly paid and trained. Censuses of civil servants, teachers, and military are ongoing and will likely upset those who profit from the existence of "ghost workers." Central government control over eastern Congo is still incomplete, with GDRC and MONUC forces working together against local militia and remaining pockets of rebel groups.

Corruption

¶40. U.S. businesses often complain about corruption in the DRC, noting that it is among their main business constraints. The Mobutu regime created a culture of corruption in the DRC during more than 30 years of rule. This ingrained culture permeated the private, public, administrative, and business environments and has been difficult to root out. The DRC was rated as the thirteenth most corrupt country out of 156 nations on Transparency International's 2005 Corruption Perception Index.

¶41. In principle, there are legal provisions to fight and sanction corruption. The DRC is a member of the UN Anti-Corruption Convention and passed its own anti-

corruption law in 2004. Additional legislation includes the 2004 Money Laundering Act, under which the DRC cooperates with African and European crime-fighting organizations. Despite these reform efforts, however, bribery is still routine in public and private business transactions, especially in the areas of government

procurement, dispute settlement, and taxation.

¶42. Bribery is illegal in the DRC and in principle it is investigated and prosecuted. The law calls for imprisonment and fines for both parties to the bribery no matter the circumstances. Despite numerous obstacles, enforcement is becoming more successful. At the end of 2005, a handful of high-level staff from public and private sector entities were in detention awaiting trial for criminal acts related to the alleged fraudulent use of tax credits.

Bilateral Investment Treaties

¶43. The United States and the DRC (then-Zaire) signed a Bilateral Investment Treaty (BIT) in 1984 that entered into force in 1989. This treaty guarantees reciprocal rights and privileges to each country's investors. The BIT provides for binding third-party arbitration in the event of an investment expropriation dispute.

OPIC and Other Investment Insurance Programs

¶44. The DRC is a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA), which offers insurance on new foreign investments to protect against foreign exchange losses, expropriation, and civil unrest. Recently, MIGA agreed to provide insurance to a mining concern in Katanga province. The GDRC is negotiating now for complete resumption of the MIGA program, which would allow for investment insurance in other sectors of the economy. The DRC is also a member of the African Trade Insurance Agency, which also provides political risk insurance.

¶45. The U.S. Overseas Private Investment Corporation (OPIC), which provides political risk insurance and project financing to U.S. investors and non-governmental organizations, ceased operations in the DRC for a time following the events of 1991. Since the establishment of the transitional government in June 2003, OPIC has granted three political risk insurance contracts in 2004, another in 2005, and is currently reviewing additional applications by American-owned companies. In March 2006, the DRC signed an accord with OPIC that will expedite the process of obtaining political risk insurance and financing.

¶46. The projected annual rate of exchange for the purposes of the 2006 DRC national budget is 500 CF/USD. The average annual rate for 2005, and the current rate of exchange, is 435 CF/USD. The U.S. Embassy purchases local Congolese currency at the official rate for payroll and administrative needs. The exchange rate has been stable over the second half of 2005, with a slight appreciation of the Congo franc against the dollar. This rate, despite the DRC budget projection of 500 CF/USD, can be expected to remain stable for 2006, based upon current macroeconomic conditions and barring a run-up in GDRC deficit spending.

Labor

¶47. Congo's large urban population provides a ready pool of available labor, including a significant number of high school and university graduates, a few of whom have studied at American universities. Employers cannot, however, take diplomas at face value. Skilled industrial labor is in short supply and must often be trained by individual companies.

¶48. The GDRC sets regional minimum wages for all workers in private enterprise, with the highest pay scales applied in the cities of Kinshasa and Lubumbashi. Wages have not kept pace with the DRC's rate of inflation. While most foreign employers pay higher wages than the official minimum, the average Congolese worker has had to cope with falling real wages for over

a decade.

¶49. The country's labor legislation was modified by the October 2002 Labor Code, which is in compliance with the conventions and recommendations of the International Labor Organization. The code provides for tight control of labor practices and regulates recruitment, contracts, the employment of women and children, and general working conditions. Strict labor laws can make termination of employees difficult. The code also provides for equal pay for equal work without regard to origin, sex, or age. The new code formally permits a woman to gain employment outside of her home without her husband's permission.

¶50. Employers must cover medical and accident expenses. Larger firms are required to have medical staff and facilities on site, with the requirements increasing with the number of employees. Mandated medical benefits are a major cost for most firms. Employers are obligated to provide family allowances based on the number of children, as well as paid holidays and annual vacations, based upon the years of service. Employers must provide daily transportation for their workers or pay an allowance in areas served by public transportation. Outside the major cities, large companies often assist by providing infrastructure including roads, schools, and hospitals.

¶51. Many labor regulations have been only sporadically enforced in recent years, due to the economic crisis and administrative corruption. Large layoffs, however, generally lead to labor disputes that can cause serious bureaucratic difficulties for the employer. The Ministry of Labor must grant permission for staff reductions. Generous pension and severance packages are required by the labor code.

Foreign Trade Zones / Free Ports

¶52. The DRC does not take part in any free trade zones or have any free ports. The DRC is a member of the Southern African Development Community (SADC) and the Common Market of Eastern and Southern Africa (COMESA), but does not yet participate in the COMESA free trade area.

Foreign Direct Investments Statistics

¶53. Obtaining reliable statistical data on foreign direct investment (FDI) is still a challenge in the DRC. There are two available sources -- the BCC and the National Agency for Investment Promotion (ANAPI).

¶54. BCC statistics are based on funds reported to the bank from actual investment projects underway, and are more accurate than those of ANAPI. These figures, however, may not capture all FDI flowing in to the DRC, therefore the quality of the BCC data is undetermined. Actual FDI amounts are probably slightly higher than the BCC figures shown here. For the last three years, BCC has published the following totals:

FDI (in USD million)

	2003	2004	2005 (thru 11/05)
Total	352.6	241.6	458.9

¶55. ANAPI registers data obtained from initial proposals by potential foreign investors. 2005 data, while very fragmentary, indicates that the service sector (mostly telecommunications companies) leads all investment sectors with 80 percent of the entire investment portfolio. The following FDI figures do not reflect actual investment flows or stocks, and they should not be considered as accurate measures of FDI in the DRC. Mining sector investment statistics are not included. The Mining Register of the Ministry of Mines

compiles these figures and reports them to the BCC.

FDI (in USD million)

Sector	2003	2004	2005/June
Services	1,615	1,760	136
Infrastructure	20	47	0
Food	9.5	12	3
Pharmaceuticals	8	14	0
Beverages/Brewery	0.2	0.1	0
Agriculture/Forestry	33	57	19
Manufacturing	80	103	13
Total	1,765.7	1,993.1	171

MEECE